IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1889 of 1982

with

CIVIL APPLICATION No 6854 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JENABIBI MAHAMEDMIYA PATHAN

Versus

BALCHANDRA MARUTIRAO CHAUHAN DIED THRO' HEIRS & LRS

Appearance:

1. Civil Revision Application No. 1889 of 1982
MR KC SHAH for Petitioner No. 1-1/3
Respondents served.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/08/2002

ORAL JUDGEMENT

The above Civil Revision Application has been preferred against the judgment and order dated 31st August, 1982 passed by the learned Extra Assistant Judge, Vadodara in Regular Civil Appeal No.266/1980. The respondent herein has passed away pending the Revision Application and is represented through his legal representatives.

The respondent (hereinafter referred to as 'the plaintiff') was the owner of the suit premises being a room and an 'osri' situated at Vadodara. The defendant was the statutory tenant of the suit premises. The plaintiff instituted Rent Suit No.113/1978 in the Court of Small Causes, Vadodara. The plaintiff claimed possession of the suit premises on the ground that the defendant was in arrears of rent for more than six months and that the plaintiff required the suit premises for his personal residence. The suit was contested by the defendant. The Court, under its judgment and decree dated 19th April, 1980, was pleased to hold that the defendant was in arrears of rent and that the plaintiff did require the suit premises for personal residence. The Court determined the standard rent at Rs.2=00 per month. Accordingly the Court passed decree for possession and also for arrears of rent. Feeling aggrieved, the defendant preferred above referred Regular Civil Appeal No.266/1980 in the Court of District Judge, Vadodara. The said appeal was dismissed by the learned 3rd Extra Assistant Judge, Vadodara under the impugned judgment and order dated 31st August, 1982. Pending the said appeal, the defendant died and she was represented through her legal representatives. Feeling aggrieved, the said appellants have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act').

Pending this Revision Application, the petitioners have preferred Civil Application No.6854/1998 for addition of grounds of challenge. The gravamen of the additional grounds is that the suit premises was initially let to one Mohammadkhan, the husband of the defendant and the father of the present petitioners. The said Mohammadkhan died in the year 1961. On his death, the defendant and the present petitioners i.e. the widow and the sons of the deceased Mohammadkhan became the statutory tenants of the suit premises. Since all the heirs of the said Mohammadkhan had, by virtue of Section 5(11)(c) of the Rent Act, become statutory tenants of the

suit premises, each such tenant was required to be given notice as envisaged under Section 12 of the Rent Act. The suit instituted without serving such notice to each of the statutory tenants was bad and required to be dismissed on that ground alone.

In my opinion, the petitioners can not be permitted to raise this additional ground of challenge at this belated stage. As it appears it is a pure question of fact whether the defendant was the only statutory tenant of the suit premises or whether the present petitioners were also the statutory tenants. The suit notice and the plaint disclose that the defendant alone was the statutory tenant. The said plea was also accepted by the defendant. In her written statement, the defendant did not claim that besides herself there were other tenants of the suit premises. Even, when the present petitioners entered the litigation as legal representatives of the deceased defendant during the pendency of appeal before the District Court, neither of them claimed to be the statutory tenant of the suit premises nor did they question the maintainability of the suit for want of notice to all the statutory tenants. If such a plea were accepted at this belated stage it shall amount to denial of fair opportunity to the plaintiff to meet the said plea. The result shall be miscarriage of justice. The Civil Application No.6854/1988 preferred by the petitioners is, therefore, rejected.

The learned advocate Mr.K.C.Shah has challenged the maintainability of the suit itself for want of notice to each of the statutory tenants. In support of his argument, he has relied upon the judgment of this Court in the matter of SHIVSHANKER BABULAL THAKORE AND ORS. V/S. THAKKER RAVIKANT [1989(2) G.L.H. (U.J.) 29]. The said judgment does lay down that each of the statutory tenants is required to be given notice as envisaged under Section 12(2) of the Rent Act. However, since I have rejected the Civil Application No.6854/1998, the said argument is not available to Mr.Shah. No other contention has been raised by Mr.Shah.

As recorded hereinabove, both the Courts below have recorded categorical finding that the defendant was in arrears of rent and was not entitled to protection under Section 12(3) of the Rent Act. Both the Courts have also held that the plaintiff requires the suit premises for his personal residence. In view of the above referred concurrent findings recorded by both the Courts below, the Courts below could not have refused the decree for possession.

In above view of the matter, I see no merit in the present Revision Application. The Revision Application is, accordingly, dismissed with costs. Rule is discharged. Interim stay stands vacated.

(Ms. R.M. Doshit, J.)

/sakkaf